105TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
105–242

MISSISSIPPI SIOUX TRIBES JUDGMENT FUND DISTRIBUTION ACT OF 1997

SEPTEMBER 3, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

REPORT

[To accompany H.R. 976]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 976) to provide for the disposition of certain funds appropriated to pay judgment in favor of the Mississippi Sioux Indians, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mississippi Sioux Tribes Judgment Fund Distribution Act of 1997".

SEC. 2. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) COVERED INDIAN TRIBE.—The term "covered Indian tribe" means an Indian tribe listed in section 4(a).

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(3) TRIAL GOVERNING BODY.—The term "tribal governing body" means the duly elected governing body of a covered Indian tribe.

SEC. 3. DISTRIBUTION TO, AND USE OF CERTAIN FUNDS BY, THE SISSETON AND WAHPETON TRIBES OF SIOUX INDIANS.

Notwithstanding any other provision of law, including Public Law 92–555 (25 U.S.C. 1300d et seq.), any funds made available by appropriations under chapter II of Public Law 90–352 (82 Stat. 239) to the Sisseton and Wahpeton Tribes of Sioux Indians to pay a judgment in favor of the Tribes in Indian Claims Commission dockets numbered 142 and 359, including interest, after payment of attorney fees and other expenses, that, as of the date of enactment of this Act, have not been distributed, shall be distributed and used in accordance with this Act.

SEC. 4 DISTRIBUTION OF FUNDS TO TRIBES.

(a) IN GENERAL.—Subject to section 5, as soon as practicable after the date that is 1 year after the date of enactment of this Act, the Secretary shall distribute an aggregate amount, equal to the funds described in section 3 reduced by $1,469,831.50, as follows:

(1) 28.9276 percent of such amount shall be distributed to the tribal governing body of the Spirit Lake Tribe of North Dakota.

(2) 57.3145 percent of such amount shall be distributed to the tribal governing body of the Sisseton and Wahpeton Sioux Tribe of South Dakota.

(3) 13.7579 percent of such amount shall be distributed to the tribal governing body of the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana, as designated under subsection (b).

(b) TRIBAL GOVERNING BODY OF ASSINIBOINE AND SIOUX TRIBES OF FORT PECK RESERVATION.—For purposes of making distributions of funds pursuant to this Act, this Sisseton and Wahpeton Sioux Council of the Assiniboine and Sioux Tribes shall act as the governing body of the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

SEC. 5. ESTABLISHMENT OF TRIBAL TRUST FUNDS.

(a) IN GENERAL.—As a condition to receiving funds distributed under section 4, each tribal governing body referred to in section 4(a) shall establish a trust fund for the benefit of the covered Indian tribe under the jurisdiction of that tribal governing body, consisting of—

(1) amounts deposited into the trust fund; and

(2) any interest and investment income that accrues from investments made from amounts deposited into the trust fund.

(b) TRUSTEE.—Each tribal governing body that establishes a trust fund under this section shall—

(1) serve as the trustee of the trust fund; and

(2) administer the trust fund in accordance with section 6.

SEC. 6. USE OF DISTRIBUTED FUNDS.

(a) PROHIBITION.—No funds distributed to a covered Indian tribe under section 4 may be used to make per capita payments to members of the covered Indian Tribe.

(b) PURPOSES.—The funds distributed under section 4 may be used by a tribal governing body referred to in section 4(a) only for the purpose of making investments or expenditures that the tribal governing body determines to be reasonably related to—

(1) economic development that is beneficial to the covered Indian tribe;

(2) the development of resources of the covered Indian tribe; or

(3) the development of a program that is beneficial to members of the covered Indian tribe, including educational and social welfare programs.

(c) AUDITS.—

(1) IN GENERAL.—The Secretary shall conduct an annual audit to determine whether each tribal governing body referred to in section 4(a) is managing the trust fund established by the tribal governing body under section 5 in accordance with the requirements of this section.

(2) ACTION BY THE SECRETARY.—

(A) IN GENERAL.—If, on the basis of an audit conducted under paragraph (1), the Secretary determines that a covered Indian tribe is not managing the trust fund established by the tribal governing body under section 5 in accordance with the requirement of this section, the Secretary shall require the covered Indian tribe to take remedial action to achieve compliance.

(B) APPOINTMENT OF INDEPENDENT TRUSTEE.—If, after a reasonable period of time specified by the Secretary, a covered Indian tribe does not take remedial action under subparagraph (A), the Secretary, in consultation with the tribal governing body of the covered Indian Tribe, shall appoint an independent trustee to manage the trust fund established by the tribal governing body under section 5.

SEC. 7. EFFECT OF PAYMENTS TO COVERED INDIAN TRIBES ON BENEFITS.

(a) IN GENERAL.—A payment made to a covered Indian tribe or an individual under this Act shall not—

(1) for purposes of determining the eligibility for a Federal service or program of a covered Indian tribe, household, or individual, be treated as income or resources; or

(2) otherwise result in the reduction or denial of any service or program to which, pursuant to Federal law (including the Social Security Act (42 U.S.C.

301 et seq.)), the covered Indian tribe, household, or individual would otherwise be entitled.

SEC. 8. DISTRIBUTION OF FUNDS TO LINEAL DESCENDANTS.

Not later than 1 year after the date of enactment of this Act, of the funds described in section 3, the Secretary shall, in the manner prescribed in section 202(c) of Public Law 92–555 (25 U.S.C. 1300d–4(c)), distribute an amount equal to $1,469,831.50 to the lineal descendants of the Sisseton and Wahpeton Tribes of Sioux Indians.

PURPOSE OF THE BILL

The purpose of H.R. 976 is to provide for the disposition of certain funds appropriated to pay a judgment in favor of the Mississippi Sioux Indians.

BACKGROUND AND NEED FOR LEGISLATION

In 1967, the Indian Claims Commission, in the case of *Sisseton and Wahpeton Bands or Tribes, et al.* v. *United States,* 18 Ind. Cl. Comm. 477 (July 25, 1967), entered a judgment in favor of the claimants for tribal lands allegedly taken by the United States in violation of certain treaty commitments made to the Sisseton and Wahpeton Bands or Tribes of Sioux Indians. The claims were prosecuted solely by the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Indian Reservation and the Devils Lake Sioux Tribe (now known as the Spirit Lake Tribe) of the Devils Lake Sioux Indian Reservation. However, the Sioux Tribes or Bands of the Fort Peck Indian Reservation who were descendant entities of the treaty tribes were joined as petitioning parties just prior to final judgment with the stipulation that whether the Fort Peck Sioux would be entitled to share in the judgment funds would be subject to the determination of the Secretary of the Interior and Congress.

When legislation was proposed to provide for distribution of the award, the Department of the Interior took the position that the Sisseton-Wahpeton Sioux, the Devils Lake Sioux, and the Assiniboine-Sioux Tribes were ethnohistorically and politically representative of a portion of the aggrieved aboriginal bands. Because of historical events, however, the Department also recommended participation of descendants who were not enrolled with these successor tribes.

The historical events referred to by the Department are set forth in a letter dated November 4, 1971, from the Assistant Secretary of the Interior to the Chairman of the House Committee on Interior and Insular Affairs on H.R. 6067 and related House bills (92nd Congress). These events relate to the Sioux uprising known as the "Minnesota Outbreak" of 1862. The military suppression of the Sioux in 1862–3 forced the dispersal of the aboriginal Upper Sioux Bands. The Interior report states that a majority of these persons became members of the three named modern-day successor entities; other joined tribes on other reservations; and in some cases the dispersed Sioux never tried to qualify for tribal membership and have not been reservation residents. The Sisseton-Wahpeton Sioux Tribe, the Spirit Lake Tribe, and the Sisseton-Wahpeton Sioux element of the Assiniboine and Sioux Tribes contend that the Interior Department report to Congress on H.R. 6067 is factually inaccurate in certain important respects and assert Constitutional restrictions on the power of Congress to provide for distribution of

these judgment funds to non-tribal member descendants based on those facts.

The 1972 act

Legislation was introduced in both Houses of Congress in the 91st Congress with differing proposals for distribution. The Senate bill would have limited participation in the award to persons of one-quarter degree or more Sisseton and Wahpeton Sioux blood; the House bill would have apportioned the award on the basis of descendancy without regard to tribal enrollment or degree of Sisseton and Wahpeton blood.

A compromise was reached in the 92nd Congress with enactment of Public Law 92–555 (Act of October 25, 1972; 86 Stat. 1168) which provided for apportionment of the funds between the three successor tribes and the unenrolled descendants. While each of the three successor tribes limited enrollment to persons with specific degrees of Sisseton and Wahpeton bloodquantum, no blood quantum was fixed for persons under the descendancy class.

The 1972 Act provided for distribution on the following basis:

Tribe or group	*Percentage*
Devils Lake Sioux Tribe of N.D	21.6892
Sisseton-Wahpeton Sioux of S.D	42.9730
Assiniboine and Sioux of Montana	10.3153
All other Sisseton and Wahpeton Sioux descendants	25.0225

The Devils Lake Sioux Tribe and the Sisseton-Wahpeton Sioux Tribe received full distribution of their respective shares in 1974 and the Assiniboine-Sioux Tribe of Fort Peck received a partial distribution of its share in 1979. In each case most of the funds were distributed per capita to the tribal members as follows:

Apr. 18, 1974—Sisseton-Wahpeton Sioux Tribe—6,006 × $376.77	$2,262,880.62
Dec. 16, 1974—Devils Lake Sioux Tribe—2,187 × $559.61	1,223,867.07
May 1, 1979—Ft. Peck (partial)—3,602 × $185.00	666,370.00

Subsequent to the partial payment to the Fort Peck group, 34 additional members were determined to be eligible. As of March 13, 1986, $194,646.85 remained in the escrow account for that group.

The lineal descendants' share of the funds has remained undistributed since enactment of the 1972 Act. The Department of the Interior indicates that this descendancy share is now in excess of $14 million. In 1979, the Department sent 1,935 lineal descendants a letter acknowledging their eligibility to participate in the award. Following the 1979 mailing to potential descendants distributees, the Department's computer files were destroyed and the Department has had to rebuild the files from previous hard copy.

In April 1987, the Sisseton-Wahpeton Sioux Tribe, the Devils Lake Sioux Tribe and the Sisseton-Wahpeton Sioux Council of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation filed suit in federal district court in Great Falls, Montana, challenging the Constitutionality of portions of the 1972 Act that provided for the distribution of the judgmentfund awarded in 1967 to these tribes by the Indian Claims Commission. As stated above, that Act provided for the distribution of approximately 25 percent of the fund to lineal descendants of the Sisseton and Wahpeton Mississippi Sioux Tribe—i.e. persons who could prove Sisseton-

Wahpeton Mississippi Sioux lineal ancestry but who were not members of any of the three tribes.

The tribes oppose any distribution of funds to lineal descendants. It is principally the Constitutionality of the portions of the 1972 Act relating to those individuals that has been the issue in their past and present litigation.

The tribes' first lawsuit

In their complaints as originally filed in 1987, the tribes claimed that: (1) granting to non-tribal individuals a portion of the funds that had vested in the tribes when the United States paid the Indian Claims Commission judgment deprived the tribes of their property without due process of law in violation of the Fifth Amendment; (2) granting a disproportionate percentage of the judgment to lineal descendants was arbitrary and capricious and, accordingly, violated the tribes' rights to due process of law and to the equal protection of the law as guaranteed by the Fifth Amendment; (3) taking funds that had vested in the tribes by judgment and contract took private property for public use without just compensation in violation of the Just Compensation Clause of the Fifth Amendment; and (4) the 1972 Act breached the United States' trust responsibility to the tribes to manage the tribe's property in a manner that would protect the property and promote the interest of the tribes.

The federal district court in Montana ruled that the six-year statute of limitations in 28 U.S.C. Section 2401(a) applied to these claims. Thus, since the claims were not filed within six years of the enactment of the 1972 Act, the Court dismissed them. The District Court did note, however, that the "Tribes complaint raises serious questions which warrant litigation" In particular, the Court concluded that if, as alleged by the tribes, "the individual lineal descendants were not parties" to the settlement with the United States incorporated in the final decree of the Indian Claims Commission, "the Distribution Act of October 24, 1972, may well constitute a deprivation of the 'property' rights of the Sioux Tribes, in violation of the proscription of the fifth amendment."

The United States Court of Appeals for the Ninth Circuit affirmed the District Court's dismissal of the claims as barred by the statute of limitations. It, too,observed that the "Tribe's substantive claims appear to have some merit; they assert that at no time prior to or including the entry of the final judgment of [the Indian Claims Commission] did the United States represent that nonmembers would have a right to any portion of the judgment funds, and that in approving the settlement, none of the tribes understood that lineal descendants would be sharing in the distribution of the judgment fund." The Ninth Circuit ruled that if the tribes amended their complaint to allege that no persons on the lineal descendancy distribution roll have a Sisseton-Wahpeton Sioux lineal ancestor or that only an exceptionally small number of such persons have a Sisseton-Wahpeton Sioux lineal ancestor, the complaint would state valid Constitutional and legal claims not barred by any statute of limitations.

In 1990, the District Court permitted the tribes to amend their complaint to allege that an exceptionally small number of persons

on the lineal descendancy distribution roll have a Sisseton-Wahpeton Sioux lineal ancestor. The tribes based this claim on a letter dated May 12, 1971, from the Assistant Secretary of the Interior to the Chairman of the Senate Committee on Interior and Insular Affairs on S. 1462 (92nd Congress) expressing the Department of the Interior's agreement with the provisions in the bill requiring that "the individual, to participate, must be able to trace lineal descent from members of the aboriginal bands."

Although the tribes offered undisputed evidence that only 65 persons on the lineal descendancy roll traced lineal ancestry to a member of the Sisseton and Wahpeton Mississippi Sioux Tribe, the District Court dismissed the tribes' claims finding that the 1972 Act only required that the name of "a lineal ancestor appears on any available records and rolls acceptable to the Secretary" even if such rolls do not identify a lineal ancestor who was a member of the Sisseton and Wahpeton Mississippi Sioux Tribe. On appeal, the Ninth Circuit affirmed.

The tribes' second lawsuit

In 1996, the tribes filed a new Constitutional challenge to the 1972 Act in federal district court in Washington, D.C. This challenge, based on a 1995 United States Supreme Court decision, claimed that by retroactively reopening and revising the Indian Claims Commission judgment awarded to the tribes, the Act was beyond the power of Congress, that is, the Act violated the separation of powers doctrine. Without addressing the merits, the District Court dismissed this case on res judicata grounds ruling that the tribes should have brought this claim as part of their original suit in 1987. The tribes have an appeal pending.

Prior legislation

In 1986, the Senate Select Committee on Indian Affairs favorably reported a bill eliminating any lineal descendancy distribution and directing that the undistributed funds be distributed to the three Sisseton and Wahpeton federally recognized tribes. In a letter dated September 10, 1986, from the Assistant Secretary of the Interior to the Chairman of the Senate Select Committee on Indian Affairs on S. 2118 (99th Congress), the Department of the Interior supported this bill:

> As a general rule, we believe that each distribution of Indian judgment funds should benefit the aggrieved historic tribe for which the award was made. If the historic tribe is no longer in existence, we believe that judgment funds should be programmed, to the greatest extent possible, to the present-day successor tribe(s) to the historic tribe. We believe that the fact situation addressed by S. 2118 meets this policy objective because the three tribes named in the bill include nearly 12,000 of the approximately 14,000 identified lineal descendants.
>
> We believe that where tribes constantly decapitalize themselves through per capita payment policies, we see little growth and development of tribal economies. We are therefore committed to the concept that judgment funds should be maintained whenever possible as a capital pool

for individual tribes to invest. We believe that our policy enhances the objective of tribal self-determination and reflects the basic intent of Congress in the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401 et seq.).

In 1992, Congress passed legislation amending the 1972 Act to permit the tribes to litigate those causes of action that the District Court in Montana and the Ninth Circuit held were barred by 28 U.S.C. Section 2401(a) as well as any other claims asserting that the 1972 Act is unconstitutional or invalid under law. This legislation also authorized the Attorney General to settle any action that may be brought by the tribes challenging the Constitutionality of the 1972 Act. At a hearing before the Senate Select Committee on Indian Affairs on S. 1705 (102nd Congress), the Department of the Interior opposed the bill "because the Congress validly provided for the distribution of the funds in the [1972 Act." President George Bush vetoed this legislation citing, among other things, "the longstanding policy of the executive branch * * * against ad hoc statute of limitations waivers and similar special relief bills" and the desirability of avoiding additional litigation with the three tribes on the issues barred by the statute of limitations. President Bush also expressed concern that the House Committee on Interior and Insular Affairs had never held hearings on the legislation.

In 1992, after the veto, Congress passed legislation amending the 1972 Act to authorize the Attorney General "to negotiate and settle any action that may be or has been brought to contest the constitutionality or validity under law of the distribution to all other Sisseton and Wahpeton Sioux provided for in section 202 of this Act." This enactment is now codified at 25 U.S.C. Section 1300d–10.

Need for legislation

Since enactment of the 1992 legislation authorizing the Attorney General to negotiate with the tribes for a settlement of their litigation, the tribes and the Congressional delegations from both North Dakota and South Dakota have attempted to secure Department of Justice participation in settlement negotiations. The Department has refused to negotiate on the ground that, in the absence of legislation directly amending and altering the lineal descendancy distribution plan set forth in section 202 of Public Law 92–555, it has no authority to settle with the tribes on terms that differ from the distribution established in that section.

H.R. 976 amends the distribution plan set forth in Section 202 of Public Law 92–555 by directing that $1,469,831.50 be distributed to the lineal descendants. This amount is the result of multiplying the percentage (25.0225%) of the Indian Claims Commission judgment apportioned to lineal descendants under the 1972 Act by the total amount of the judgment ($5,874,039.50). H.R. 976 directs that the remainder of the undistributed funds apportioned to lineal descendants under Section 202 of Public Law 92–555 be distributed to the three federally recognized successor tribes to the Sisseton and Wahpeton Mississippi Sioux Tribe. This distribution change is consistent with the judgment fund distribution policy announced by the Department of the Interior in its letter supporting the 1986 leg-

islation. This policy is sound and, since 1986, the Department has continued to endorse this policy.

In opposing enactment of H.R. 976, the Department expressed several concerns. One concern was that H.R. 976 could create a takings claim by the lineal descendants under the Just Compensation Clause of the Fifth Amendment. In addressing this same issue in connection with the 1986 legislation, the Department, in a letter dated September 10, 1986, from the Assistant Secretary of the Interior to the Chairman of the Senate Select Committee on Indian Affairs on S. 2118 (99th Congress), stated:

> We do not believe that any rights have vested and understand that the Department of Justice has supported this view. Moreover, under *Delaware Tribal Business Committee* v. *Weeks,* 430 U.S. 73 (1977), it clear that the judgment funds at issue are tribal property in which individuals, as such, do not have an interest. The manner in which Congress decides to program a judgment award will generally not be disturbed by the courts provided that the legislative judgment can be tied rationally to the fulfillment of the unique Federal obligation to Indians. We further note that *Weeks* strongly suggests that where funds have not actually been paid out, Congress remains free to change the distribution scheme (430 U.S. at 90). Here, the Sisseton-Wahpeton lineal descendants' proportionate share of the judgment funds has never been paid to them.

In a letter dated April 17, 1986, from the Assistant Attorney General to the Chairman of the Senate Select Committee on Indian Affairs on S. 2118 (99th Congress), the Department of Justice stated: "We note that none of the judgment funds in question has ever been paid to the Sisseton-Wahpeton lineal descendants. *United States* v. *Jim, supra* [409 U.S. 80, 82 (1972), reh'g denied, 409 U.S. 1118 (1973)], indicates that even actual payment of money under a distribution scheme does not preclude an alteration of that scheme and that the alteration still does not give rise to a Fifth Amendment taking."

In its testimony before the Committee on Resources on H.R. 976, the Department of the Interior acknowledged that Congress has the power to change the distribution scheme in Public Law 92–555 and that the legal conclusions reached on the takings question by both the Department of the Interior and the Department of Justice in 1986 remain sound.

The Department of the Interior also expressed the concern that H.R. 976 could be affected by the recent decision of the Eighth Circuit in *Loudner* v. *United States* [108 F.3d 896 (8th Cir. 1997)] and by the three tribes' ongoing litigation challenging the Constitutionality of the lineal descendancy distribution provisions of Public Law 92–555. *Loudner* may result in increasing the number of lineal descendants. If that occurs, the amount allocated in H.R. 976 for distribution to lineal descendants will be distributed in equal amounts to all lineal descendants. The outcome of *Loudner* will not affect this amount or the amount that H.R. 976 apportions for distribution to the three tribes.

The three tribes support enactment of H.R. 976 and have testified that should this measure be enacted, they intend to discontinue their pending litigation. Termination of the tribes' litigation will save both the tribes and the federal government substantial additional litigation costs.

The Committee believes that the change in the distribution plan is fair to both the lineal descendants and the three tribes. Although the lineal descendants do not have a vested legal right to the funds apportioned to them by Public Law 92–555, for 25 years they have had an expectation that a distribution would be made to them. Although the policy of Congress is to disapprove per capita distributions of judgment funds wherever possible, fairness requires that such a longstanding expectation should result in a per capita distribution to these lineal descendants. Under H.R. 976, the lineal descendants will still receive more than double the amount distributed to members of the three tribes.

Fairness also requires that the three tribes receive the present and future accumulated interest on the funds apportioned to lineal descendants by Public Law 92–555. These tribes are the successors-in-interest to the tribal entity that owned the land, the taking of which is the basis for the Indian Claims Commission award. Individual tribal members had no ownership interest in these taken lands. Without the participation of the lineal descendants, the tribes litigated the Indian Claims Commission action against the United States. The Commission judgment was based on a compromise settlement agreement with the United States. The Commission required that the tribes approve the settlement agreement. When Federal Government officials explained the terms of the settlement to the three tribes, no mention was made that lineal descendants, not members of the tribes, would be entitled to any portion of the judgment fund. Only tribal members voted to approve the settlement agreement, and they did so with the understanding that the tribes and their members would receive all of the judgment fund. The Commission judgment was entered in favor of the tribes and also did not indicate that nonmember lineal descendants would have a right to a distribution of any portion of the judgment fund.

The distribution authorized by Public Law 92–555 will also result in the lineal descendants receiving more than 18 times the amount of money distributed to the tribes and their members in the 1970s. In addition, dispersal of the judgment funds in a way that will likely have a short-term impact on individuals and no potential for long-term beneficial impacts on any tribal community should be limited. H.R. 976 requires the tribes to use the distributed funds for economic and resource development and for education, social welfare and other programs beneficial to tribal members. The distributed funds used for these purposes will have long-term impacts beneficial to the Sisseton-Wahpeton Sioux communities as a whole. This advances the policy of Congress to assist tribes in achieving self-determination and economic self-sufficiency.

Committee amendment

The Committee recommends one amendment to the bill as introduced. The amendment would delete subsection 7(b), which pro-

vides that "a payment made to a covered Indian tribe or individual under this Act shall not be subject to any Federal or State income tax." This language is unnecessary. Indian tribes are not taxable entities for either federal or state income tax purposes. Individual Indian judgment payments have historically been tax free where the amount of the judgment funds was calculated on the basis of the value of the lost capital asset at the time of its loss. The language is also unnecessary because it largely duplicates Section 304 of Public Law 92–555 (25 U.S.C. Section 1300d–8).

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 cites the short title of the bill as the "Mississippi Sioux Tribes Judgment Fund Distribution Act of 1997."

Section 2. Definitions

Section 2 defines the terms "covered Indian tribe," "Secretary," and "tribal governing body" for purposes of this Act.

Section 3. Distribution to, and use of certain funds by, the Sisseton and Wahpeton Tribes of Sioux Indians

Section 3 supersedes that section of Public Law 92–555 which provided for distribution to the lineal descendants, and provides that their share shall be distributed in accordance with the provisions of this Act.

Section 4. Distribution of funds to tribes

Section 4, after reducing the undistributed amount of the judgment fund by $1,469,831.50, gives the percentages of the remaining funds that are to be apportioned to the governing bodies of the three tribes.

Section 5. Establishment of tribal trust funds

Section 5 requires each of the three tribes to establish and administer a trust fund into which each tribe must deposit the funds it receives under this Act together with any interest and investment income that accrues from investments made from amounts deposited into the trust fund.

Section 6. Use of distributed funds

Subsection (a) of Section 6 prohibits the three tribes from making any per capita payments to tribal members from the funds received under this Act. Subsection (b) provides that the funds received under this Act may only be used for making investments or expenditures reasonably related to tribal economic and resource development and the development of educational, welfare and other programs beneficial to tribal members. Subsection (c) requires the Secretary to annually audit each tribe's management of the trust fund established under Section 5.

Section 7. Effect of payments to covered Indian tribes on benefits

Section 7 provides that for purposes of receiving federal benefits and services, payments received by any of the three tribes or by

any individual under this Act shall not be treated as income or resources or be a basis for reducing or denying any federal service or program.

Section 8. Distribution of funds to lineal descendants

Section 8 requires that within one-year after the date of enactment of this Act, the Secretary distribute $1,469,831.50 to lineal descendants of the Sisseton and Wahpeton Mississippi Sioux Tribe. This section supersedes that section of Public Law 92–555 which provided for distribution to the lineal descendants.

COMMITTEE ACTION

H.R. 976 was introduced on March 6, 1997, by Congressman Rick Hill (R–MT), and cosponsored by Congressman John R. Thune (R–SD) and Congressman Earl Pomeroy (D–ND). The bill was referred to the Committee on Resources. On June 24, 1997, the full Committee on Resources held a hearing on H.R. 976, where the Administration testified in opposition to the bill. On July 16, 1997, the full Committee on Resources met to consider H.R. 976. An amendment to delete an unnecessary provision relating to the tax treatment of payments made pursuant to this Act was offered by Congressman Hill, and adopted by voice vote. The bill as amended was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(l) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact H.R. 976.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 976. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC., August 22, 1997.

Hon. DON YOUNG,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 976, the Mississippi Sioux Tribes Judgment Fund Distribution Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lisa H. Daley (for federal costs), and Marjorie Miller (for the impact on state, local, and tribal governments).

Sincerely,

PAUL VAN DE WATER
(for June E. O'Neill, Director).

Enclosure.

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 976 does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Congressional Budget Office estimates that enactment of H.R. 976 would affect direct spending, but that this would be offset by a reduction in outlays, resultingin no net cost to the federal government.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 976.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 976 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 976—Mississippi Sioux Tribes Judgment Fund Distribution Act of 1997

Summary: H.R. 976 would direct the Secretary of the Interior to distribute previously appropriated funds, plus accrued interest, to certain tribal governing bodies and individuals as payment of a judgment in favor of the Mississippi Sioux tribes. Various legal challenges make it unlikely that the funds would be disbursed within the next several years under current law. Hence, enacting this bill would result in payments being made in the near term that otherwise would be made at some point in the future. The bill also requires the establishment of trust funds for the tribal distributions and prescribes purposes for which those funds can be spent.

CBO estimates that enacting H.R. 976 would affect direct spending over the 1998–2007 period, but would result in no net cost to the federal government over time. We estimate that direct spending would increase by a total of about $16 million over fiscal years 1998 and 1999 and that this spending would be offset by a reduction in outlays of at least that amount sometime thereafter. Because H.R. 976 would affect direct spending, pay-as-you-go procedures would apply.

H.R. 976 contains an intergovernmental mandate, as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), which would affect tribal governments. CBO estimates that complying with this mandate would entail no net costs. Further, this bill would confer substantial benefits on tribal governments. This bill would impose no new private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: For the purposes of this estimate, we assume the bill will be enacted by October 1, 1997. CBO estimates that enacting H.R. 976 would have no significant impact on discretionary spending but would affect direct spending over the 1998–2007 period.

This bill would require that $1.47 million, which was appropriated in 1968 for the judgment, be distributed to the lineal descendants of the Sisseton and Wahpeton Tribe of Sioux Indians within one year after enactment of this bill. As soon as practicable thereafter, the interest that has accrued on the initial appropriation would be distributed to the governing bodies of the Spirit Lake Sioux Tribe of North Dakota, the Sisseton and Wahpeton Sioux Tribe of South Dakota, and the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana. For the purposes of this estimate, CBO assumes that the Secretary would disburse the $1.47 million to the lineal descendants in fiscal year 1998. We estimate that the Secretary would pay $14.8 million in accrued interest to the three tribal governments in the following year. This estimate assumes that interest would continue to accrue until the final distribution.

The direct spending in 1998 and 1999 would be offset by a reduction in outlays of at least the same amount at some point in the future. Based on information provided by the Bureau of Indian Affairs and the Department of Justice, CBO expects that the two court cases currently delaying the payments would not be resolved until sometime after fiscal year 1999. Through we have no basis for knowing when the court cases will be resolved, the resulting payments would equal at least the amount that would be paid under this legislation, plus accrued interest. For the purposes of this estimate, we have assumed that, under current law, these payments to the Mississippi Sioux tribes and lineal descendants would be made in 2002. The resulting budgetary effects are shown in the following table.

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002
Spending under current law: [1]					
Estimated budget authority	.....	.....	.....	.....	20
Estimated outlays	.....	.....	.....	.....	20
Proposed changes:					
Estimated budget authority	.....	1	15	.....	−20

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002
Estimated outlays	.....	1	15	.....	−20
Spending under H.R. 976:					
Estimated budget authority	.....	1	15	.....	.....
Estimated outlays	.....	1	15	.....	.....

[1] CBO cannot predict precisely when the payments would be made under current law because the timing depends on judicial proceedings. This table illustrates the budgetary effects that would occur assuming the payments were made in fiscal hear 2002.

The costs of this legislation fall within budget function 450 (community and regional development).

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 specifies pay-as-you-go procedures for legislation affecting direct spending or receipts through fiscal year 2006. As shown above, CBO estimates that enacting H.R. 976 would increase direct spending by $1.47 million in fiscal year 1998 and $14.8 million in fiscal year 1999, which would be offset by a reduction in direct spending of $20.4 million in 2002.

Estimated impact on State, local, and tribal governments: H.R. 976 contains an intergovernmental mandate as defined in UMRA, but CBO estimates that complying with this mandate would entail no net costs. The bill would place requirements upon the affected tribes specifying how judgment funds must be used. Funds distributed to the tribes would have to be placed in trust funds with the tribal governing bodies service as trustees. These funds could not be used to make per capita payments to tribal members, but rather would be used for tribal programs. While these duties would be mandates, any costs would be more than offset by the funds that tribes would receive as a result of the bill.

The most significant impact of this bill on tribal governments would be the benefit conferred by the bill's proposed distribution of judgment funds. Under current law, the Mississippi Sioux Tribes would receive no additional funds under these judgments. The funds due to the tribes under the distribution plan originally approved by the Congress have already been paid. The remaining funds were to be paid to lineal descendants of the Sisseton and Wahpeton Tribes. Under the earlier plan, these individuals were to have received about $1.47 million. Those funds have not yet been paid because of ongoing litigation and, with accrued interest, currently amount to about $14 million. This bill would establish a revised distribution plan under which the descendants would receive only the original principal amount and the tribes would receive the accumulated interest.

Estimated impact on the private sector: H.R. 976 would impose no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Lisa H. Daley. Impact on State, Local, and Tribal Governments: Marjorie Miller.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

According to the Congressional Budget Office, H.R. 976 contains an intergovernmental mandate by placing requirements on the affected Indian tribes specifying how the judgment funds must be

used, but complying with this mandate would entail no net costs and therefore the mandate is not an unfunded one.

CHANGES IN EXISTING LAW

If enacted, H.R. 976 would make no changes in existing law.

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